

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 1, 2002

REGULATORY AUTH.

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OFFICE OF THE
EXECUTIVE SECRETARY

IN RE:

COMPLAINT OF XO TENNESSEE, INC.
AGAINST BELL SOUTH
TELECOMMUNICATIONS, INC.

DOCKET NO.
01-00868

ORDER FROM JANUARY 23, 2002 STATUS CONFERENCE
AND FEBRUARY 1, 2002 PRE-HEARING CONFERENCE

This docket came before the Hearing Officer for consideration of various issues at a Status Conference held on January 23, 2002 and a Pre-Hearing Conference held on February 1, 2002. The issues decided are discussed below.

I. Status Conference

On January 23, 2002, the Hearing Officer convened a Status Conference for the purposes of discussing the need for a formal hearing, potential witnesses, and the status of stipulations of fact. The parties in attendance were as follows:

Access Integrated, Inc., XO Tennessee, Inc., ITC^DeltaCom, and Cynergy Communications, Inc. - **Henry Walker, Esq.**, Boulton, Cummings, Conner & Berry, 414 Union Street, #1600, P.O. Box 198062, Nashville, TN 37219-8062;

Consumer Advocate and Protection Division - **Chris Allen, Esq.**, Consumer Advocate and Protection Division, P.O. Box 20207, Nashville, TN 37202-0207; and

BellSouth Telecommunications, Inc. - **Guy M. Hicks, Esq.**, 333 Commerce Street, 22nd Floor, Nashville, TN 37201-3300 and **Patrick Turner, Esq.**, 675 West Peach Street, N.E., Suite 4300, BellSouth Center, Atlanta, GA 30375.

At the start of the conference, the parties confirmed that they had not entered into stipulations of fact and did not expect to do so. Next, through discussions with counsel, the

Hearing Officer determined that a formal hearing was necessary. Counsel for Access Integrated, Inc. and XO Tennessee, Inc. (collectively "Complainants") and counsel for the Consumer Advocate and Protection Division ("Consumer Advocate") indicated that each may call BellSouth Select, Inc. and BellSouth Telecommunications, Inc. ("BellSouth") employees as hostile witnesses.¹ Thereafter, BellSouth requested a ruling as to whether BellSouth had to produce these witnesses. Hearing no substantive arguments as to why these witnesses should not be made available, the Hearing Officer issued an oral ruling requiring their appearance.

II. Pre-Hearing Conference

On February 1, 2002, the Hearing Officer convened the Pre-Hearing Conference in order to: (1) dispose of the *Application for Permission to Practice* filed on behalf of R. Douglas Lackey by BellSouth on January 31, 2002; (2) address an issue as to Dr. Aniruddha Banerjee, a BellSouth witness, raised in the cover letter to BellSouth's pre-filed rebuttal testimony filed on January 30, 2002; (3) establish the order of testimony; and (4) resolve any other issues raised in the course of the Conference. The parties in attendance were as follows:

Access Integrated, Inc., XO Tennessee, Inc., ITC^DeltaCom, and Cynergy Communications, Inc. - **Henry Walker, Esq.**, Boulton, Cummings, Conner & Berry, 414 Union Street, #1600, P.O. Box 198062, Nashville, TN 37219-8062;

Consumer Advocate and Protection Division - **Chris Allen, Esq.**, Consumer Advocate and Protection Division, P.O. Box 20207, Nashville, TN 37202-0207; and

BellSouth Telecommunications, Inc. - **Guy M. Hicks, Esq.**, 333 Commerce Street, 22nd Floor, Nashville, TN 37201-3300 and **Patrick Turner, Esq.** and **R. Douglas Lackey, Esq.**, 675 West Peach Street, N.E., Suite 4300, BellSouth Center, Atlanta, GA 30375.

¹ The specific employees listed were Richard Tice, Scott Johnson, Jeffery White, Don Livingston, and Scott Davis. Don Livingston was employed by BellSouth Telecommunication Inc.'s Small Business Services, but is now employed by BellSouth Affiliate Services Corporation.

The Hearing Officer first addressed the *Application for Permission to Practice*. Given that no party objected and the application contained the language required by Rule 19 of the Rules of the Supreme Court, the Hearing Officer granted the application. Next, the parties discussed the appearance of Dr. Aniruddha Banerjee at the hearing. BellSouth confirmed that a medical condition prevented Dr. Banerjee from attending the hearing, but stated that he could testify telephonically. Rather than telephonically cross-examine Dr. Banerjee or postpone the hearing, Complainants, Cinergy Communications, Inc., ITC^DeltaCom and the Consumer Advocate agreed to waive cross-examination of Dr. Banerjee, to permit his pre-filed rebuttal testimony to be entered into the record, and to solicit any testimony with regard to Dr. Banerjee's pre-filed rebuttal testimony from their own witnesses. BellSouth agreed to this arrangement.² The parties next agreed to ten (10) minute opening arguments and the filing of post-hearing briefs and established the following order of testimony:

Complainants, Cinergy Communications, Inc. and ITC^DeltaCom

- Rodney Page
- Joseph Gillan

Consumer Advocate

- Stephen Brown
- Mark H. Crocker

BellSouth

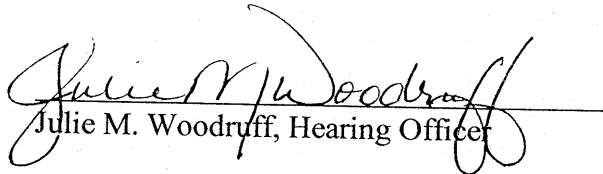
- Richard Tice
- Don Livingston
- Scott S. Davis
- Ena A. Shaw
- Thomas F. Lohman

No further issues being raised, the Hearing Officer adjourned the Pre-Hearing Conference.

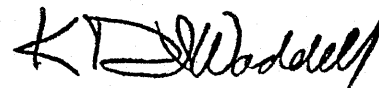
² BellSouth also sought to obtain the same treatment of Access Integrated, Inc. and ITC^DeltaCom's witness, Joseph Gillan, but the parties declined the offer.

IT IS THEREFORE ORDERED THAT:

1. The Hearing in this docket shall proceed as scheduled on February 4, 2002 at 9:00 a.m. Parties shall have ten (10) minutes for opening arguments and will be permitted to file post-hearing briefs on a date to be determined at the conclusion of the hearing. Testimony shall be presented in the order stated herein.
2. In addition to those witnesses BellSouth Telecommunications, Inc. will call at the hearing, it shall also make available Scott Johnson and Jeffrey White.
3. The pre-filed rebuttal testimony of Dr. Aniruddha Banerjee filed with the Executive Secretary on January 30, 2002 shall be entered into the record of the Hearing.
4. The *Application for Permission to Practice* filed on behalf of R. Douglas Lackey by BellSouth Telecommunications, Inc. on January 31, 2002 is granted.


Julie M. Woodruff, Hearing Officer

ATTEST:



K. David Waddell, Executive Secretary